

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MILLENNIUM LABORATORIES,
INC.,

Plaintiff,

v.

DARWIN SELECT INSURANCE CO.,

Defendant.

Civil No. 14cv295 BAS (JLB)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
DARWIN'S MOTION TO COMPEL
TESTIMONY AND OVERRULE
OBJECTIONS**

[ECF No. 45]

Presently before the Court is Defendant Darwin's motion to compel testimony and overrule objections. (ECF No. 45.) Plaintiff filed a response in opposition on November 14, 2014 (ECF No. 46), and Defendant Darwin filed a reply on November 17, 2014. (ECF No. 47.) After reviewing the motion and the response in opposition, the Court ordered Plaintiff to file a supplemental declaration and to attach an amended response to Defendant Darwin's Notice of Deposition of Millennium Laboratories, Inc. (ECF No. 50.) Having reviewed the papers before the Court, Defendant's motion is **GRANTED IN PART** and **DENIED IN PART**.

Defendant moves the Court to overrule Plaintiff's General Objection 7, which Defendant describes as an objection "to the entire Deposition Notice." (ECF No. 45-1 at 3.) On the contrary, Plaintiff's General Objection 7 objects to the notice "*to the extent* that the discovery sought is potentially prejudicial to Millennium's defense of its underlying

1 claims.” (ECF No 45-2 at 7, emphasis added.) Because Plaintiff has not yet objected to any
2 specific questions, the Court does not have sufficient information to rule on the objection.
3 Therefore, Defendant’s motion to overrule General Objection 7 is **DENIED AS**
4 **PREMATURE**.

5 Defendant also seeks a court order overruling Plaintiff’s General Objection 9, in
6 which Plaintiff objects to the entire Notice on the basis that it is premature. Plaintiff puts
7 forth two reasons why proceeding with the deposition is premature: (1) document discovery
8 is not complete because Plaintiff is seeking to modify a protective order in the underlying
9 lawsuit; and (2) Plaintiff had a pending motion to add the Zicari Lawsuit to the instant
10 matter. (ECF No. 45-2 at 7.) On December 17, 2014, the joint motion to amend the
11 complaint to add the Zicari lawsuit was granted. (*See* ECF No. 69.) Plaintiff has failed to
12 establish that the status of document discovery is a sufficient reason to forestall the noticed
13 deposition indefinitely. Accordingly, Defendant’s motion to overrule General Objection
14 9, to the extent it objects to the Notice in its entirety, is **GRANTED**. The Court does not
15 address the language of General Objection 9 purporting to limit the length of the deposition,
16 as that objection is not ripe, and may have been rendered moot by the Court’s December 17,
17 2014 Order granting the parties’ joint motion to amend the complaint. (ECF No. 69.)

18 With respect to Topic 3, Plaintiff provided an amended response in which it agreed
19 to designate and produce a witness to testify to “Millennium’s business relationship
20 generally and with regard to Millennium’s claims concerning the Nelson Lawsuit.” Plaintiff
21 further agreed to produce a witness as to the Zicari and Millennium v. Nelson lawsuits,
22 provided those lawsuits are added to the instant litigation. In light of the Court’s Order
23 granting the joint motion to amend the complaint and add the Zicari Lawsuit and the Nelson
24 Counterclaims (ECF No. 69), Defendant’s motion to compel as to Topic 3 is **DENIED AS**
25 **MOOT**.

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1 To the extent that Defendant's Motion seeks a court order compelling Plaintiff to
2 designate a witness as to noticed Topics 10-13, 17, and 20, the Motion is **DENIED AS**
3 **MOOT**. Plaintiff's amended response to Defendant Darwin's Notice of Deposition reflects
4 that Plaintiff has agreed to designate a witness on each noticed topic. (*See* ECF No. 52-1.)

5 As to Topic 16, the Court finds that Plaintiff's limitation in its amended response is
6 appropriate, and Defendant's motion to compel Plaintiff to designate a witness as to the full
7 extent of Topic 16 as defined by Defendant is **DENIED**. As to Topics 30-32, Defendant has
8 failed to meet its burden to support the motion to compel Plaintiff to designate and produce
9 a witness to testify beyond the topic Plaintiff has agreed to in its amended response.
10 Defendant's motion to compel Plaintiff to designate a witness as to the full extent of Topics
11 30-32 as defined by Defendant is **DENIED**.

12 **IT IS SO ORDERED.**

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14 **DATED: December 18, 2014**

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16 **JILL L. BURKHARDT**
17 **United States Magistrate Judge**
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